MICHAEL BODAK, JR., CLER

# In the Supreme Court of the Anited States

October Tenne, 1972

No. 71-1804

CHARLES B. BRADLEY, JR., ET AL,

UNITED STATES OF AMERICA,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPRAIS FOR THE FIRST CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 10, 1972 CERTIORARI GRANTED JUNE 12, 1972

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Mar. 18	Indictment	ts returned against all four	defendants
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	CARREST C	States vs. Charles B. Bradl	ey, Jr. 1, 3,
FIRE 1-12	ees, 101 16H	Byron H. Johnson	n 1, 2
	the manufacture of	Robert T. Odell,	fr. 1, 8
Street !	SHITTLE SECTION	William James H	
	26 U.S.C	7. 7237(b)—Conspire to se	ll a narcotic
		Cocaine (count 1)	Charles and
Last erro		. 4705(a)—sell a narcotic d	
SEL O		n order (counts 2, 3).	
	19 U.S.(	J. 924(c)(2)—Carry a fire	earm during
NEW MESSA	commi	ssion of a felony (count	s 4, 5, 6)
29	Four defen	dants appear with counsel	for arraign-
The th	ment, Uni	ted States District Court,	District of
ALC: NO	Massachus	etts, before Wyzanski, Ch	J.
May 4	Jury trial	commenced.	Carri Silve
6	Jury return	is with following verdicts:	with country
State Section	Count 1	Charles B. Bradley, Jr.	Guilty
	e are a particular	Robert T. Odell, Jr.	Guilty
10.87	Y BON DEAD	Byron H. Johnson	Guilty
allera v	Houghings b	William James Helliesen	Guilty
PER PUTULAN	Count 2	Byron H. Johnson	Not Guilty
STEET 57 5 57 27	Count 3	Charles R. Bradley	Not Chilte
MARKET LATERAL	Count 4	Charles B. Bredley	Quilty
	Count 5	Robert T. Odell, Jr.	Gnilty
	Count 6	William James Helliesen	Guilty
June 7	Defendants	Bradley and Odell file n	otice of ap-
THE COURT	peal.	out has the fire bils (rost	anjah n sen
11	Defendants	Johnson and Helliesen fi	le notice of
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8 Motion for order vacating sentences and for Feb. remand of appellants filed, Motion for stay of mandate filed in Court of Appeals. Chents

Mar. 10 Order of Court of Appeals, First Circuit, denying motions for vacating sentences, for remand and 2.1 for stay of mandate.

### Witter James Helliegen 1.6 OHOUSE UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

Criminal No. 71-147-Wanted Tolling State of the W

UNITED STATES OF AMERICA

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commission of ? folony (counts 4.5, ()) minute to CHARLES B. BRADLEY, JR. to Jacobs ( BYRON H. JOHNSON ROBERT T. O'DELL, JR. WILLIAM J. HELLIESEN

#### lary relative with following vertices real INDICTMENT

willie! The grand jury charges:

### COUNT I

From on or about March 4, 1971, and continuously thereafter up to and including March 12, 1971 at Cambridge and Provincetown in the District of Massachusetts and various other places known and unknown to the grand jury, CHARLES B. BRADLEY, JR., BYRON H. JOHNSON, ROBERT T. ODELL, JR., WILLIAM J. HELLIESEN, and Arthur Motsis (named herein as a co-conspirator but not a defendant) did wilfully and knowingly combine, conspire, confederate, and agree together and with each other and with divers other persons whose names are to the grand jury unknown, to commit an offense against the United States, that is, to sell, barter, exchange, and give away a narcotic drug, to wit: a quantity of cocaine not in pursuance of a written order of the person to whom such narcotic was to be sold on a form issued in blank for that purpose by the Secretary of the Treasury or his delegate, in violation of Title 26, United States Code, Section 4705 (a); all in violation of Title 26, United States Code, Section 7237(b).

### OVERT ACTS.

In furtherance of the conspiracy and to effect the object thereof:

On or about March 4, 1971, CHARLES B. BRADLEY
met with a special agent of the Bureau of Narcotics and
Dangerous Drugs concerning the sale of cocaine.

2. On or about March 11, 1971, CHARLES B. BRAD-LEY had a conversation with a special agent of the Bureau of Narcotics and Dangerous Drugs concerning a date when a sale of cocaine to the agent could be effectuated.

3. On or about March 12, 1971, CHARLES B. BRAD-LEY met with two special agents of the Bureau of Narcotics and Dangerous Drugs in an automobile in Cambridge. BRADLEY stated that he would sell a quantity of cocaine for \$9500.

4. On or about March 12, 1971, CHARLES B. BRAD-LEY, BYRON H. JOHNSON and ROBERT T. ODELL had a conversation concerning the cocaine to be sold at 73 Magazine Street in Cambridge with a special agent of the Bureau of Narcotics and Dangerous Drugs.

5. On or about March 12, 1971, WILLIAM J. HEL-LIESEN, CHARLES B. BRADLEY, BYRON H. JOHN-SON and ROBERT T. ODELL were present in the apartment at 73 Magazine Street at the time when the transfer of cocaine to a special agent of the Bureau of Narcotics and Dangerous Drugs was to take place.

6. On or about March 12, 1971, WILLIAM J. HELLIE-

SEN transported a quantity of cocaine to 73 Magazine Street, Cambridge in his automobile.

#### This make of the COUNTIL

On or about March 12, 1971 at Cambridge in the District of Massachusetts, BYRON H. JOHNSON did sell, barter, exchange, and give away a narcotic drug, that is a quantity of cocaine, not in pursuance of a written order of the person to whom such narcotic was sold on a form issued in blank for that purpose by the secretary of the Treasury or his delegate; in violation of Title 26, United States Code, Section 4705(a).

### YALILI HE A PRINT COUNT III

On or about March 12, 1971 at Cambridge in the District of Massachusetts, CHARLES B. BRADLEY, JR., did sell, barter, exchange, and give away a narcotic drug, that is, a quantity of cocaine, not in pursuance of a written order of the person to whom such narcotic was sold on a form issued in blank for that purpose by the secretary of the Treasury or his delegate; in violation of Title 26, United States Code, Section 4705(a).

#### . ashirdore of stand COUNT IV

On or about March 12, 1971 at Cambridge in the District of Massachusetts, CHARLES B. BRADLEY, JR., did wilfully, knowingly and unlawfully carry a firearm, to wit: P. Beretta-Gardone V.T., Caliber 22 LR—Model 1948, Serial No. 076851 N, an automatic pistol containing a clip of seven rounds of ammunition, during the commission of a felony which may be prosecuted in a court of the United States, that is, a violation of Title 26, United States Code, Sections 4705(a) and 7237(b); in violation of Title 18, United States Code, Section 924(c)(2).

#### COUNT V

On or about March 12, 1971 at Cambridge in the District of Massachusetts, ROBERT T. ODELL, JR. did wilfully,

knowingly and unlawfully carry a firearm, to wit: Fabrique Nationale D'Arma, DeGuerre Herstal Belgique, Caliber 32, Serial No. 143694, an automatic pistol containing a clip with six rounds of ammunition, during the commission of a felony which may be prosecuted in a court of the United States, that is, a violation of Title 26, United States Code, Section 4705(a) and Section 7237(b); in violation of Title 18, United States Code, Section 924(c)(2).

COUNT VI

On or about March 12, 1971 at Cambridge in the District of Massachusetts, WILLIAM J. HELLIESEN did wilfully, knowingly and unlawfully carry a firearm, to wit: Mac-C, 1919 Model 1935 S, M1, Caliber 7.65 L, an automatic pistol containing a clip with six rounds of ammunition, during the commission of a felony which may be prosecuted in a court of the United States, that is, a violation of Title 26, United States Code, Sections 4705(a) and 7237(b); in violation of Title 18, United States Code, Section 924(c) (2).

United States District Court
FOR THE
DISTRICT OF MASSACHUSETTE

Cr No. 71-147-W

UNITED STATES OF AMERICA

CHARLES B. BRADLEY, JR.

### JUDGMENT AND COMMITMENT

On this 2nd day of June, 1971 came the attorney for the government and the defendant appeared in person and by counsel

It Is Adjudged that the defendant upon his pleas of not guilty as to counts 1, 3, and 4, and verdicts of guilty as to counts 1, 4, and not guilty as to count 3, has been convicted

of the offenses of violations of Title 26, U.S.C., Section 7237(b) in that he did wilfully conspire with other persons to commit an offense against the United States, that is, to sell a narcotic drug (cocaine) not in pursuance of a written order on a form issued in blank by the Secretary of the Treasury; and Title 18, U.S.C., Section 924(c)(2) in that he did wilfully, knowingly and unlawfully carry a firearm during the commission of a felony which may be prosecuted in a court of the United States, as charged in an Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT Is ADJUDGED that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for a period of five (5) years on count 1. The Court directs that defendant be given credit for the six (6) days he has already spent in custody from March 12, 1971 through March 17, 1971. And on count 4, defendant be imprisoned for a period of one (1) year, said prison sentence to be served on and after the sentence imposed on count 1; said prison sentence is suspended, and defendant is placed on probation for a period of three (3) years.

IT Is ADJUDGED that both sentences are stayed pending appeal.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the Deputy United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

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United States District Judge.

(s) RUSSELL H. PECK Clerk.

# United States District Court FOR THE DISTRICT OF MASSACHUSETTS

Cr No. 71-147-W

United States of America

WILLIAM JAMES HELLIESEN

### JUDGMENT AND COMMITMENT

On this 2nd day of June, 1971 came the attorney for the government and the defendant appeared in person and by counsel

IT Is ADJUDGED that the defendant upon his pleas of not guilty as to counts 1 and 6, and verdicts of guilty as to counts 1 and 6, has been convicted of the offenses of violations of Title 26, U.S.C., Section 7237(b) in that he did wilfully conspire with other persons to commit an offense against the United States, that is, to sell a narcotic drug (cocaine) not in pursuance of a written order on a form issued in blank by the Secretary of the Treasury; and Title 18, U.S.C., Section 924(c)(2) in that he did wilfully, knowingly and unlawfully carry a firearm during the commission of a felony which may be prosecuted in a court of the United States, as charged in an Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

IT Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Atorney General or his authorized representative for imprisonment for a period of five (5) years on count 1. The Court directs that defendant be given

credit for the four (4) days he has already spent in custody, from March 12, 1971 through March 15, 1971. And on count 6 defendant be imprisoned for a period of one (1) year, said prison sentence to be served on and after the sentence imposed on count 1; said prison sentence is suspended, and defendant is placed on probation for a period of three (3) years.

IT Is ADJUDGED that both sentences are stayed pending

appeal.

IT Is Ondered that the Clerk deliver a certified copy of this judgment and commitment to the Deputy United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(s) C. WYZANSKI

United States District Judge.

(s) BUSSELL H. PECK Clerk.

United States District Court
FOR THE
DISTRICT OF MASSACHUSETTS

Cr No. 71-147-W

UNITED STATES OF AMERICA

ROBERT T. ODELL, JR.

### JUDGMENT AND COMMITMENT

On this 2nd day of June, 1971 came the attorney for the government and the defendant appeared in person and by counsel

It Is Adviced that the defendant upon his pleas of not guilty as to counts 1 and 5, and verdicts of guilty as to counts 1 and 5, has been convicted of the offenses of violations of Title 26, U.S.C., Section 7237(b) in that he did wilfully conspire with other persons to commit an offense

against the United States, that is, to sell a narcotic drug (cocaine) not in pursuance of a written order on a form issued in blank by the Secretary of the Treasury; and Title 18, U.S.C., Section 824(c)(2) in that he did wilfully, knowingly and unlawfully carry a firearm during the commission of a felony which may be prosecuted in a court of the United States, as charged in an Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT Is ADJUDGED that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years on count 1. The Court directs that defendant be given credit for the five (5) days he has already spent in custody, from March 12, 1971 through March 16, 1971. And on count 5, defendant be imprisoned for a period of one (1) year, said prison sentence to be served on and after the sentence imposed on count 1; said prison sentence is suspended, and defendant is placed on probation for a period of three (3) years.

IT Is ADJUDGED that both sentences are stayed pending appeal.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the Deputy United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

It is Annueso that both controves are stayed pending

### (6) Ned lo Bushes (8) C. WYZANSKI

United States District Judge.

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(s) RUSSELL H. PECK Clerk.

## DISTRICT COURT DISTRI

DISTRICT OF MASSACHUSETTS

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Cr No. 71-147-West and the second state of the second second

United States of America

ByBON H. JOHNSON

## JUDGMENT AND COMMITMENT

On this 2nd day of June, 1971 came the attorney for the government and the defendant appeared in person and by counsel

It is Adjudged that the defendant upon his pleas of not guilty as to counts 1 and 2, and verdicts of guilty as to counts 1 and 2, and verdicts of guilty as to count 1, and not guilty as to count 2, has been convicted of the offense of violation of Title 26, U.S.C., Section 7237(b), in that he did wilfully conspire with other persons to commit an offense against the United States, that is, to sell a narcotic drug (cocaine) not in pursuance of a written order on a form issued in blank by the Secretary of, the Treasury, as charged in an Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five (5) years. The Court directs that defendant be given credit for the fifteen (15) days he has already spent in custody, from March 12, 1971 through March 26, 1971.

Ir Is Anjundent that both sentences are stayed pending appeal.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the Deputy United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(s) C. WYZANSKI

United States District Judge.

(s) RUSSELL H. PECK

Clerk.

## TRANSCRIPT OF SECOND DAY OF TRIAL [Title omitted in printing]

[Day 2, p. 4]

Mr. Homans: Your Honor, it now being May 4th, taking into consideration the repeal of 26 United States Code, Section 7237, I think it should be stated for the record that all defense counsel to my knowledge have suggested to the Office of the United States Attorney that they would be prepared to discuss the question of pleading to informations carrying non-mandatory minimum sentences. I say this merely for the record and not to put pressure on my brother, but since it may raise questions in the future, as to the effect of that amendment, and the position it puts the defendants and defense counsel in, we have offered to discuss the question of pleading to non-mandatory counts. We have not been successful.

Mr. Ware: I have discussed the question and I refuse to dismiss the mandatory charges.

The Court: Is the statute exactly the same except reduction of penalty?

Mr. Ware: No, Your Honor.

Mr. Chisholm: May I have the statement now?

Mr. Ware: Yes.

End of conference at the bench.)

Nos. 71-1186, 71-1187, inchestable and to incention to add at 71-1188, 71-1189. ANYW (3.18)

UNITED STATES OF AMERICA,

CHARLES B. BRADLEY, JR.,
BYRON H. JOHNSON,
ROBERT T. ODELL, JR., and
WILLIAM JAMES HELLIESEN,
DEFENDANTS, APPELLANTS.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

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January 27, 1972

(Opinion appears in Petition for Writ of Certiorari at pp. 18-29)

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 71-1186: saithempoult becauselfo west I Come W . W.

SOLUTION AND A

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UNITED STATES OF AMERICA,

BYRON H. JOHNSON,

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### JUDGMENT

Entered: January 27, 1972

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

(s) Dana H. Gallup, Clerk.

By: (s) Francis P. Scigliano Chief Deputy Clerk.

[cc: Messrs. Homans and Ware.]

### UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 71-1187.

UNITED STATES OF AMERICA,
APPELLEE,

WILLIAM HELLIESEN, DEFENDANT, APPELLANT.

### JUDGMENT

Entered: January 27, 1972

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

(8) DANA H. GALLUP, Clerk.

By: (a) Francis P. Scigliano
Chief Deputy Clerk,

[cc: Messrs. Homans and Ware.]

### UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 71-1188.

Consider N. cont. Con

UNITED STATES OF AMERICA,

v.
CHARLES B. BRADLEY, JR.,
DEFENDANT, APPELLANT.

#### JUDGMENT

Entered: January 27, 1972

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

Enter:

By the Court:

(8) DANA H. GALLUP, Clerk.

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By: (s) Francis P. Scigliano Chief Deputy Clerk.

[cc: Messrs. Lapon and Ware.]

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No. 71-1189.

### UNITED STATES OF AMERICA,

17.

ROBERT T. ODELL, JR., DEFENDANT, APPELLANT.

### JUDGMENT

Entered: January 27, 1972

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

Enter:

By the Court:

(s) DANA H. GALLUP, Clerk.

By: (8) Francis P. Scigliano Chief Deputy Clerk.

[cc: Messrs. Altman and Ware.]

Nos. 71-1186, 71-1187, 71-1188, 71-1189.

UNITED STATES OF AMERICA,

CHARLES B. BRADLEY, JR.,
BYRON H. JOHNSON,
ROBERT T. ODELL, JR., and
WILLIAM JAMES HELLIESEN,
DEFENDANTS, APPELLANTS.

## DEFENDANTS', APPELLANTS' MOTION FOR ORDER VACATING SENTENCES AND FOR REMAND

Defendants, Appellants move that the sentences herein be vacated and that the cases be remanded to the District Court for resentencing pursuant to Rule 35, Federal Rules of Criminal Procedure.

The grounds of this motion are as follows:

- 1. Each defendant, appellant was found guilty on May 6, 1971, of violation of 26 U.S.C., § 7237(b) and thereafter adjudged to be guilty as charged and convicted and further it was adjudged that each defendant, appellant be committed to the custody of the Attorney General for a period of five years pursuant to the conditions of 26 U.S.C., § 7237(b) and (d);
- 2. Under the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, certain sentencing alternatives, including probation, suspension of sentence and parole became effective as of May 1, 1971;

3. The District Court imposed illegal sentences upon defendants, appellants in that said Court did not take into account in sentencing defendants, appellants the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, P.L. 91-513, insofar as such Act provided the aforesaid sentencing alternatives;

4. Defendants, appellants state that this motion is made in good faith in that the holding of *United States* v. Stephens, 449 F.2d 103 (9 Cir., 1971), holds that the sentencing alternatives in P.L. 91-513 are available to defendants sentenced following May 1, 1971, even though convicted of offenses carrying mandatory minimum sentences prior to May 1, 1971.

By their attorneys,

- (s) WILLIAM P. HOMANS, JR.
  WILLIAM P. HOMANS, JR.
  FEATHERSTON, HOMANS & KLUBOCK
  45 School Street
  Boston, Massachusetts 02108
- (s) Edward M. Altman
  Edward M. Altman
  678 Massachusetts Avenue
  Cambridge, Massachusetts 02139
  - (s) STANLEY R. LAPON
    STANLEY R. LAPON
    678 Massachusetts Avenue
    Cambridge, Massachusetts 02139

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Nos. 71-1186, 71-1187, 2007 A 2007 Street, 1907 A 2007 A 2

UNITED STATES OF AMERICA,

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CHARLES B. BRADLEY, JR., BYRON H. JOHNSON,
ROBERT T. ODELL, JR., and
WILLIAM JAMES HELLIESEN,
DEFENDANTS. APPELLANTS.

### DEFENDANTS', APPELLANTS' MOTION FOR STAY OF MANDATE

Defendants, appellants move that the mandate of this Court be stayed until such time as defendants, appellants shall have been resentenced by the District Court in accordance with defendants, appellants motion for order vacating sentences and for remand filed herewith.

By their attorneys,

- (8) WILLIAM P. HOMANS, JR.
  WILLIAM P. HOMANS, JR.
  FRATHERSTON, HOMANS & KLUBOCK
  45 School Street
  Boston, Massachusetts 02108
- (s) Edward M. Altman
  Edward M. Altman
  678 Massachusetts Avenue
  Cambridge, Massachusetts 02139
- (s) STANLEY R. LAPON
  STANLEY R. LAPON
  678 Massachusetts Avenue
  Cambridge, Massachusetts 02139

Nos. 71-1186, 71-1187, 71-1188, 71-1189.

UNITED STATES OF AMERICA,
APPELLER,

v.

CHARLES B. BRADLEY, JR.,
BYRON H. JOHNSON,
ROBERT T. ODELL, JR., and
WILLIAM JAMES HELLIESEN,
DEFENDANTS, APPELLANTS.

ON MOTION FOR ORDER VACATING SENTENCES
AND FOR REMAND

March 10, 1972 (Opinion appears in Petition for Writ of Certiorari at pp. 11-15)

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 71-1186.

UNITED STATES OF AMERICA,
APPELLER,

BYRON H. JOHNSON,
DEFENDANT, APPELLANT.

No. 71-1187. 3972 SO TATOD ESTATE GATTER

### UNITED STATES OF AMERICA. APPELLER.

Net 11 188, 71 1181, WILLIAM HELLIESEN, DEPENDANT, APPELLANT.

No. 71-1188.

UNITED STATES OF AMERICA. APPRILER,

No. organia

CHARLES B. BRADLEY, JR., DEFENDANT, APPELLANT.

No. 71-1189, KREY STEELS OF REAL PROPERTY 22

UNITED STATES OF AMERICA. APPRILEE,

D. daras.

ROBERT T. ODELL, JR., DEPENDANT, APPELLANT.

### RIANGIA ORDER OF COURT GITTIVE

Entered March 10, 1972

In accordance with the opinion filed herein today.

THE PARTY OF THE PARTY OF THE

It is ordered that the appellants' motion for order vacating sentences and for remand and appellants' motion for stay of mandate pending resentencing be, and they hereby are, denied. NUMBERSON.

By the Court:

(8) DANA H. GALLUP Clerk.

socionesti Avenue Contration Meantiment & Later



## Supreme Court of the United States

No. 71-1304 , October Charge

James B. Bradley, Jr., et al.,

Petitioners,

United States

Charlester and Append